July 26, 2021

Via Electronic Delivery

In Regards Copyright Royalty Board 37 CFR Part 385
[Docket No. 21–CRB–0001–PR (2023–2027)]
Determination of Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

Copyright Royalty Judge David R. Strickler
Chief Copyright Royalty Judge Jesse M. Feder
Copyright Royalty Judge Steven Ruwe
US Copyright Royalty Board
101 Independence Ave SE
Washington, DC 20024

To Your Honors:

My name is Abby North. I am a music publishing administrator based in Los Angeles. My views expressed in this letter are solely my own.

With my husband, I am a copyright owner of the classic song "Unchained Melody," among other copyrights. I also administer musical works on behalf of songwriters, their families and heirs. My clients depend on royalties to pay for life's essentials.

It is imperative that the Judges understand that despite what some parties may argue, Subpart B royalties absolutely are meaningful to songwriters.

There is no dispute over the fact that streaming is the most prominent form of music distribution, as reported in the popular press. But mounting evidence shows a significant and consistent growth in vinyl production. CDs remain popular among some listeners. Other listeners prefer to have permanently available digital copies, i.e., downloads.

Vinyl, once written off for dead, has enjoyed almost 15 years of consecutive growth, with more than 19 million vinyl records sold in the US so far this year. Per *Digital Music News*, this is an increase of 108% over the previous year. The Judges need only look to this year's Record Store Day on July 17 for confirmation of the vinyl resurgence.

Amazon Music now offers a "Vinyl of the Month" club, curated by "the experts at Amazon Music."

Vinyl pressing plants are overwhelmed by the volume of orders they are fulfilling, and it is commonly understood in the industry that vinyl sales would be far higher if production could keep up with demand.

Vinyl is now treated as a merchandise item by many labels and artists, and as such it is a significant contributor to the overall earnings of many artists, from the smallest independent to Taylor Swift.

An artist/songwriter of Taylor Swift's stature may not rely on earnings from vinyl, but other songwriters most certainly do. This is particularly true of artist/songwriters who have seen their high margin vinyl sales cannibalized by streaming (as was noted in the recent report by the UK Parliament's Digital Culture Media & Sport Committee on the Economics of Music Streaming). And ALL songwriters rely on any source of revenue available for exploitation of their songs.

As a rightsholder and administrator of legacy and current copyrights, I can testify that mechanicals from physical and download media are a substantial share of overall royalties.

In reviewing my clients' 2Q21 statements, one legacy songwriter received 57% of his period royalties from physical mechanicals and 9% from download mechanicals. Another writer had uniquely high grand rights and sync royalties for the period, but still saw 17% of overall royalties from physical and download mechanicals. If we remove the grand rights and sync amounts, the overall total from physical and download mechanicals is 35%.

It is clear that streaming rates, even at 15.1%, are not sustainable for most songwriters. It is obvious that without a more equitable streaming revenue distribution model, we will continue to see songwriters leave the business entirely, or at least be forced to pick up side gigs to increase their income.

These facts provide the undeniable case against freezing the Subpart B rate at $.091 per unit. Arguments I have heard from insiders defending their decision to freeze the rates are that downloads will decline if Apple stops supporting iTunes, and that physical sales are so negligible that they just do not matter. Walk into any record store or follow fans to the merch stands at a concert and you will see and hear the real story. Also, Apple is not the only distributor of digital downloads.

It appears that significant and impactful decisions are allowed to be made by a tiny group of participants that is in the room primarily because this group has tens of millions of dollars to fund legal expenses. This very small group with undeniably substantial resources and very deep pockets decided that it is in support of a rate freeze.

This very small group is now asking the Judges to apply its private deal to each and every songwriter in the world. And yet, almost none of these songwriters were included in that decision to freeze the rate.

The ability for just two trade organizations to have such an oppressive global impact is staggering. What about the rest of the songwriters and independent publishers and their due process rights?

Respectfully, I implore the Judges to keep in mind that the NMPA does not represent all music publishers, and the NMPA itself owns no copyrights. At best, the NMPA Board of Directors could speak solely for the music publishers that employ them.

NSAI is one of many United States songwriter organizations, and like the NMPA, owns no copyrights. It most certainly does not represent all songwriters from all US songwriter organizations, and it certainly does not represent songwriters around the world who are not affiliated with songwriter organizations.

As an illustration of global songwriter opposition, both the UK's Ivors Academy and the European Composer and Songwriter Alliance have each come out against frozen mechanicals.

I ask the Judges to recognize that NSAI and the NMPA do not have such broad authority to reasonably put forth decisions that affect all the world's songwriters and publishers.

In the recent Web V decision, the Judges acknowledged the need for an inflation-indexed increase in the statutory rate for sound recordings. Due to the inevitable decline in buying power created by inflation, the physical and download mechanical rate must correspondingly increase.

I have no objection to a settlement related to mechanicals. I do have an objection to a freeze proposed without authority that does not both increase the old $.091 rate and also include an adjustment for inflation at a bare minimum.

To freeze the rate for 20 years ignores the debilitating impact of inflation, ignores the needs of songwriters and truly independent music publishers like me who are not represented before the CRB, and frankly, displays a willingness to undervalue music.

It is imperative that in the future, publishers and songwriters at large, domestically, and globally be given a mechanism to participate in the rate-setting process, whether or not they have millions of dollars to spend on lawyers.

Music is crucial to human well-being. The American Songbook and its many creators are a treasured element of United States, and in fact, world culture.

How can something so important, so meaningful and so rare not be deserving of a rate increase that at least mitigates the effect of inflation?

Sincerely,

Abby North
North Music Group LLC